IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14815 of 2005
Date of decision 16 .9.2006

Om Parkash .. petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.PK Chugh, Advocate for the petitioner

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 16.7.2006 (Annexure P.3) charge-sheeting the petitioner for indulging in corrupt practices. FIR No.250 dated 25.4.2006 under Sections 7 and 13 of the Prevention of corruption Act,19881 at Police State Civil Lines, Hissar has also been registered against the petitioner. He was placed under suspension. A copy of the FIR has also been placed on record as Annexure P.1. The grievance made by the petitioner is that the charge sheet dated 16.7.2006 (Annexure P.3) be quashed against him and a prayer is made that the departmental proceedings be stayed.

The petitioner has been working as ASI with the respondent state. On account of registration of FIR No. 250 dated 25.4.2006, he was placed under suspension on 1.6.2006 and a regular departmental enquiry was ordered against him. In that regard, a charge sheet was issued on 16.7.2006. The petitioner requested for deferring the departmental enquiry till such time the evidence in criminal trial is complete. The afore-mentioned facts unequivocally shows that the petitioner is a member of the

disciplinary force and have been charged with demand and acceptance of illegal gratification of Rs. 2000/- in a trap case. In the departmental proceedings, the charges are emanating from the same FIR; criminal trial is yet to commence and the petitioner is yet to be charged by the criminal court. Obviously, the list of witnesses in both the proceedings have not yet been issued nor it is possible for this Court to go into the afore-mentioned question as to whether the defense of the petitioner before the Criminal Court would get prejudiced. It is well settled that disciplinary proceedings cannot be stayed as a matter of course. The prejudice to the defence of a delinquent official like the petitioner before the criminal court is only one factor which laced with a number of other factors namely , that the charges must be the same and that the case must involve conflicting question of facts and law. The afore-mentioned view has been taken by their Lordships of the Supreme Court in paras 14 and 15 of the judgement in the case of State of Rajasthan v. B.K.Meena (1996)6 SCC 417.

The aforementioned view has been approved in the cases of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679**; **Kendriya Vidyalaya Sangathan v. T. Srinivas, (2004) 7 SCC 442** and **State Bank of India v. R.B. Sharma, (2004) 7 SCC 27**. In Capt. M. Paul Anthony's case (supra) some of the factors which would govern the issue of staying the departmental proceedings during the pendency of a criminal case, have been summarized in para 22 and the same reads as follows:-

> " 22. (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
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> (ii) If the departmental proceedings and the criminal

case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

When the facts of the present case are examined in the light of the principles laid down by the Hon'ble Supreme Court in the afore-mentioned judgements it becomes evident that no such conclusion can be recorded by us that the charge in criminal case against the petitioner is of

grave nature which involves complicated questions of law and facts warranting stay of departmental proceedings till the conclusion of the trial trial. We are further of the view that departmental proceedings in cases involving employees working in disciplinary force like the petitioner cannot be permitted to be unduly delayed. In any case, the present case is not of such a nature which would warrant staying of the departmental proceedings against the petitioner as it would hamper and obviously affect the public interest and it would serve the interest of the accused only. On the basis of the afore-mentioned factor it is not possible for us to accept the argument raised by the counsel for the petitioner for staying the departmental proceedings till the conclusion of criminal proceedings.

We are further of the view that the prayer of the petitioner for quashing the charge sheet is wholly unsustainable as there is ample authority for us to observe that such a charge sheet cannot be set aside. There are good and sufficient reasons given for proceeding against the petitioner in a departmental enquiry and therefore, the argument raised against the charge sheet dated 16.7.2006 (Annexure P.3) is hereby rejected.

For the reasons stated above, this petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

16.9.2006
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